



**U.S. Citizenship  
and Immigration  
Services**

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 18142718

Date: SEP. 15, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a project engineer, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined that the Petitioner qualifies for the underlying classification as an advanced degree professional and that his proposed endeavor has both substantial merit and national importance. However, the Director denied the petition, concluding that the evidence did not establish that the Petitioner is well positioned to advance the proposed endeavor or that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner submits additional evidence and reasserts his eligibility, arguing that the Director erred in the decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

## **I. LEGAL FRAMEWORK**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this

classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit

documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may grant a national interest waiver as matter of discretion. See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

The record indicates that the Petitioner earned a Ph.D. degree in engineering from a U.S. university in 2017. Therefore, he qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver. For the reasons discussed below, we conclude that the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

### A. National Importance

Although the Director determined that the Petitioner’s proposed endeavor has both substantial merit and national importance, we withdraw the Director’s finding concerning the national importance portion of the Petitioner’s eligibility under the first *Dhanasar* prong. As the below discussion illustrates, we conclude that the evidence is insufficient to support a finding that the endeavor has national importance.

The Petitioner’s nontechnical job description from the Form I-140 is to “[c]onduct research in traffic and transportation; perform microsimulation traffic modeling and analyze traffic operations, safety, capacity, and flow.” The Petitioner currently works as a project engineer for a private engineering firm called [REDACTED]. In the initial filing, the Petitioner stated that his proposed endeavor is to “continue his research on the level of service (LOS), traffic capacity, and vulnerability to climate change effects of critical transportation infrastructure.” He then referred our attention to a letter from an employee relations manager at [REDACTED] which contains the following description of the Petitioner’s project engineer position duties:

[The Petitioner] is responsible for microsimulation traffic modeling and traffic operation analysis. He works on projects related to traffic operations, traffic capacity, signalized intersection and freeway analyses, evaluation of current and proposed road geometry and road conditions utilizing state of the art computer software. [The Petitioner] also works on traffic safety related projects, traffic signal optimization and

coordination, and traffic signalization of newly proposed roads and toll roads. He has also been involved in roundabouts modeling, traffic forecasts, traffic signal design, and ITS design for traffic applications, and drafting overhead and ground mounted road signs.

It is important to note that the Petitioner described his proposed endeavor as conducting research, whereas his employer's description does not explicitly include research as part of his project engineer position. Although the [ ] letter mentioned that the Petitioner "is responsible for," "works on," and "has been involved in" various projects, such descriptions do not contain details such as the specific clients or customers the Petitioner serves, the specific roadways or intersections his projects involve, nor the software he uses in his analyses. While the position title of "project engineer" suggests that the Petitioner has specific and discrete projects that he will carry forward, we have little information concerning any such projects and whether they are research-based. Because [ ] did not describe the Petitioner's work as research, it is not apparent whether the referenced projects are included within his proposed endeavor. Here, we discern a distinction between engineering duties as part of his project engineer role and research as part of his proposed endeavor, but we do not have sufficient information with which to determine whether or how they differ. Furthermore, it is not apparent whether the Petitioner has control over which projects he works on or whether [ ] assigns the project workload, which is an important factor if the focus of the projects diverge from the Petitioner's proposed research topics. In such a case, it is not known how much time the Petitioner would devote to his proposed endeavor while also executing his project engineering duties for [ ].

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. As research has the potential to impact the field differently than engineering projects would, such details are important for determining the potential prospective impact of the proposed endeavor. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Although the Director determined that the Petitioner satisfied the national importance element of the first *Dhanasar* prong, we withdraw that finding and conclude that the Petitioner has not sufficiently described his proposed endeavor such that national importance has been established.

The Petitioner submitted evidence of his publications and citation record to establish how his past research success suggests that his future endeavor will have a similar impact. Most the Petitioner's research publications were produced while the Petitioner was a student and researching under the auspices of university faculty. Notably, the record contains little evidence of the Petitioner's research since he left academia and joined a private engineering firm. The record contains a copy of one 2018 article that appears to have been published during the Petitioner's tenure at [ ]. While the Google Scholar citation record from the initial filing does not list this particular publication, the updated citation record submitted with the Petitioner's response to the Director's request for evidence (RFE) lists this article as well as another article published in 2020. According to the Google Scholar printouts, neither article has been cited to by other researchers. While we acknowledge that this may simply indicate that the Petitioner has thus far spent only a limited amount of time in his current role, the record nevertheless does not support a finding that the Petitioner's work in his current position has had a broad impact on the field. This is important, as it calls into question the Petitioner's claims that his endeavor is nationally important and will have a broader impact.

Even if we assume that the Petitioner conducts research as a part of his duties at [REDACTED] a conclusion not supported by the record, this still does not adequately address how his research would be known widely enough to have a broader impact rising to the level of national interest. As [REDACTED] is a private firm that presumably solicits business from clients and customers, it is not apparent that any internal research discoveries would be made publicly available rather than maintained as proprietary information. In addition, the Petitioner does not offer a sufficiently direct connection between his research and the roadway or traffic safety improvements that might be produced as a result of his findings. To illustrate, the Petitioner has not offered a proposed timeline for when his research will be incorporated into roadways and intersections, which roadways and intersections will feature his work, or whether any specific entities have incorporated his research into their transportation infrastructure. Accordingly, we conclude that the Petitioner must establish a more direct connection between the proposed endeavor and the broader implications of it.

We examined the recommendation letters from academics and engineers familiar with the Petitioner's work. The authors largely discuss the same few examples of the Petitioner's past research accomplishments and how the authors believe these accomplishments contributed to the field. Although the authors describe the Petitioner's past research work, they demonstrate little knowledge of his work since the Petitioner left academia and began his position with [REDACTED] nor do they offer information concerning the Petitioner's proposed endeavor. Overall, we observe that many authors broadly report the same information about the Petitioner's past research topics and how his research has been cited by other researchers. While research must add information to the pool of knowledge in some way in order to be accepted for publication, this alone is insufficient to substantiate a claim of impact to the field. Simply asserting the claim of contribution to the field does not persuasively establish actual contribution. In examining the citations referenced by the authors, we observe that some citations to the Petitioner's work merely support the conclusion that research has been conducted in this area already, but not that the Petitioner's work has had an impact on the field. In other words, merely citing to the Petitioner's work does not necessarily mean that others are utilizing his "innovations" or "recommendations" such that actual impact to the field may be established. Significantly, we note that some of the researchers who cited to the Petitioner's work also cite other researchers for the same concept. In this way, the record neither shows that the Petitioner's work is innovative or novel, as some authors claimed in their recommendation letters, nor does it show that the Petitioner, as opposed to other researchers in the field, have produced the claimed research impact.

Finally, we acknowledge the articles on roadway safety and traffic accidents, which the Petitioner submitted in support of his national importance arguments. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. While the articles offer useful background information, they are of little probative value in this matter as they do not discuss the impact of the Petitioner's specific proposed endeavor.

As previously stated, the Petitioner has not adequately described his proposed endeavor. Furthermore, to the extent that his proposed endeavor can be understood, we conclude that the record does not contain sufficient evidence to establish its national importance. For the foregoing reasons, we withdraw the Director's finding concerning the Petitioner's eligibility under the first Dhanasar prong and conclude

instead that the evidence is insufficient and lacks the requisite detail necessary to support a finding that the endeavor has national importance.

#### B. Whether the Petitioner is Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. Initially we note that in our precedent *Dhanasar* decision, we found “[t]he petitioner’s education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research.” *Id.* at 893. As this demonstrates, we look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and citations are merely one factor among many that may contribute to such a finding. The record includes documentation of the Petitioner’s curriculum vitae, academic degree, grant funding for his academic research topics, published articles, evidence of citations to his published work, and recommendation letters which discuss his past research projects and accomplishments as a civil engineer. Additionally, in his RFE response, the Petitioner submitted updated information on his citation and publication records, reference materials to support the Petitioner arguments that he has a record of success in his field, and a letter of recommendation from [redacted] of [redacted] University in Sweden. While we do not discuss each individual piece of evidence in the record, we have reviewed and considered each one.

The Petitioner relied heavily on his citation rate and publications in support of his argument that he is well positioned to advance his proposed endeavor; however, as previously stated, we look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor. The Petitioner asserted that his research “[is] novel,” “has helped [other] authors,” and “was critical information for [redacted]’s study.” In addition, he claimed that his work was “crucial” to other researchers and “had a direct impact on the direction” of a [redacted] and [redacted] study. Although the Petitioner provided the relevant articles to evidence that these researchers and others have cited his work, we do not find support for the Petitioner claims within the articles or within other evidence in the record. It is not apparent how the Petitioner can comment on what is important to or relied upon by other researchers, particularly if the referenced articles do not contain support for such claims.

As previously discussed, the authors of the originally submitted recommendation letters discussed the Petitioner’s past research accomplishments and how the authors believe these accomplishments contributed to the field. However, some of the authors offered conclusions that are not supported by evidence in the record. For instance, [redacted], a professor in the Department of Civil and Architectural Engineering at the University of [redacted], stated that a particular researcher [redacted] cited the Petitioner’s work in recognition of its “cutting-edge” value and that the researchers recognized the “validity and novelty” of the Petitioner’s work. In our examination of the relevant [redacted] article, we observe no commentary on the cutting-edge, valid, or novel nature of the Petitioner’s work. Rather, [redacted] cites to the Petitioner’s and others’ research to illustrate how researchers use machine learning and computational intelligence. Similarly [redacted] stated that researchers [redacted] and [redacted] recognized the Petitioner’s research as “innovative” and found his research parameters to be “important” for modeling specific parts of the freeway. In examining the relevant article, we observe that although [redacted] and [redacted] cite the Petitioner’s research, along with the research of others, they do not state or

even imply that the Petitioner's work is innovative or important. Accordingly, we conclude that [ ] [ ] mischaracterized the Petitioner's research accomplishments.

Likewise, [ ] claimed that the Petitioner's work is "cutting edge" merely because other researchers have cited to the Petitioner's findings. However, we conclude that simply citing to the Petitioner to evidence that other researchers, including the Petitioner, have examined a particular topic does not persuasively establish that the work is "cutting-edge." [ ] also claimed that the Petitioner's work is important to other researchers and that they "relied heavily" on it. [ ] included the specific example of the [ ] researchers in support of this claim. In review of the relevant article, we observe no mention or implication that the Petitioner's work was important to these researchers nor does it appear that it was heavily relied upon in relation to the other researches also cited within the publication. Once again, it is not apparent how [ ] can comment on what is important to or relied upon by other researchers, particularly if the articles he referenced do not contain support for such assertions.

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* Because some of the authors mischaracterized how others cite the Petitioner's work and offered unsubstantiated claims concerning the Petitioner's influence in the field, we question their credibility and conclude that these letters are of limited probative value in this matter.

The Petitioner argues that the funding his research received from the Florida Department of Transportation positions him well to advance his proposed endeavor. However, we conclude that this funding has little relevance to the Petitioner's ability to carry out the proposed endeavor. [ ] University received the funding for a research project conducted at the university. The record does not indicate that the Petitioner personally, specifically, or exclusively received this funding. Second, the funding appears to have been for the university's research in this field, not the Petitioner's proposed endeavor. Third, although the Petitioner served as a graduate researcher on the team that utilized this grant funding, there is little indication that the Petitioner has had access to any grant funding after leaving academia and entering the workforce as a project engineer in a private firm. Accordingly, the Petitioner has not adequately established how this funding has any bearing on his ability to advance his proposed endeavor.

We acknowledge the Petitioner's argument that the Director's misapplied *Matter of Katigbak*, 14 I&N Dec. 45 (Reg'l Comm'r. 1971) to reject evidence that post-dated the filing of the petition. While we agree that the Director did not specifically identify any evidence rejected for consideration, the Petitioner must nevertheless establish his eligibility at the time of filing for the immigration benefit. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). As it pertains to the second Dhanasar prong, the Petitioner must establish that he is well positioned to advance the endeavor at the time of filing. Accordingly, any improved positioning that comes about after the filing of the petition, such as newly acquired funding or increased acclaim for his work, is not persuasive in establishing eligibility at the time of filing.

As previously noted in our national importance discussion, the Petitioner has not described his endeavor with sufficient detail. We do not know what specific engineering projects the Petitioner will work on or how they fit within his proposal to perform research. In addition, we also noted that the Petitioner has not identified any specific clients he works with, or any intersections or roadways where his research will be applied. Accordingly, he has not provided a sufficient model or plan for future activities, which inhibits our examination of the progress he has made towards achieving the proposed endeavor. As fully explained above, the university funding from the Florida Department of Transportation does not pertain to the Petitioner's proposed endeavor and therefore does not represent interest from potential customers, users, investors, or other relevant entities or individuals. Although the Petitioner has published research and obtained an advanced degree in his field, these factors alone are insufficient to establish that he is well positioned to advance his endeavor, particularly when the success of his research has not been substantiated. Here, we incorporate by reference our prior discussions of the Petitioner's claimed accomplishments in the field, the recommendation letters submitted on his behalf, and others' citations to his work.

As the record is insufficient to show that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the Dhanasar framework.

### C. National Interest Waiver

Because the documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision or that the Petitioner is well positioned to advance the proposed endeavor under the second prong, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in Dhanasar, therefore, would serve no meaningful purpose.

## III. CONCLUSION

The Petitioner qualifies for classification as a member of the professions holding an advanced degree under section 203(b)(2)(A) of the Act. However, the evidence has not shown that the proposed endeavor is of national importance or that the Petitioner is well positioned to advance it. As such, he has not established that a waiver of the job offer and labor certification would be in the national interest of the United States. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.